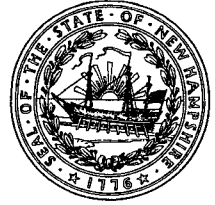




State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-2147 FAX (603) 271-6588



LETTER OF DEFICIENCY
SP 2005-07

October 18, 2005

Andrew & Christine Lane
2 Woodvue Rd
Windham, NH 03087

RE: DES Wetlands File #2002-02309 2 Woodvue Rd, Windham

Dear Mr. and Mrs. Lane:

The Department of Environmental Services ("DES") has conducted a review of the above referenced property, more specifically referenced on Town of Windham Tax Map 18L as Lot 1 (the "Property"). This property has been the subject of DES enforcement action for potential tree cutting within the 150 foot woodland buffer, construction of a garage within the primary building setback, potential filling of wetlands for garage construction and construction of a tennis court within the primary building setback. The purpose of the review was to determine compliance with RSA 482-A and NH Code of Admin. Rules Wt 100-800 and RSA 483-B and the NH code of Admin. Rules Env-Ws 1400-1411.

Based on the review by DES the following has been documented:

- On July 26, 1999, in response to a complaint of tree cutting within the protected shoreland, personnel from DES conducted a site inspection of the above referenced property, to determine compliance with RSA 483-B, the Comprehensive Shoreland Protection Act (CSPA) (Shoreland file # BB-99-052-3).
- On August 2, 1999, DES issued a letter (copy enclosed) stating that based on available data the tree removal was outside the jurisdiction of the CSPA.
- On October 22, 2002, a complaint was filed with DES, for the alleged disturbance of jurisdictional wetlands to construct a garage (Wetlands file # 2002-2309).
- On April 16, 2003, personnel from DES conducted an inspection of the subject property in response to the alleged violation.
- On April 29, 2003, DES issued a letter (copy enclosed) stating the reference line was closer than previously determined and that prior to any further work on the subject property a licensed surveyor should be retained to establish the reference line elevation along the property.
- On July 13, 2004, DES received a complaint alleging the construction of a tennis court located between the primary building line and the reference line on the subject property on Canobie Lake.

- On November 8, 2004, DES issued a letter (copy enclosed), stating the garage is an accessory structure in accordance with RSA 483-B, and must meet the setback requirements. Based on the information provided in a report by Nobis Engineering, dated October 11, 2004, the reference line elevation for Canobie Lake is 219.91 NGVD (National Geodetic Vertical Datum). The proposed garage location would have 46 square feet located inside the primary building line less than the 150 square foot threshold for accessory structures and therefore in compliance with RSA 483-B, the CSPA.
- On July 25, 2005, DES personnel conducted a site inspection of the above referenced property to review the activities related to construction of a tennis court on the subject property. During the inspection, DES stated the need to continue maintaining appropriate erosion controls on the subject property related to the tennis court and garage construction. DES further stated that additional review would follow to determine the pre existing status of the tennis court.
- On September 9, 2005, DES obtained an aerial photo (copy enclosed), from the Department of Resources and Economic Development (DRED). The aerial photo was taken June 23, 1999, as part of a forest health inventory project conducted by DRED. (The aerial photo was produced by Park Aerial Survey's Inc. at a scale of 1:15,840, using color infra-red aerial photography, during leaf on conditions).
- The aerial photo, dated June 23, 1999, documents a healthy, well distributed stand of vegetation, with no improved areas beyond the footprint of the house towards the lake. There is indication of a pool, garage or tennis court located on the subject property at the time the aerial photo was taken.

Therefore based on the review, DES has determined the tennis court did not exist prior to 1994, and therefore you are requested to take the following actions:

Within 45 days of the date of this letter submit a restoration plan for removal of the paved area constructed for the tennis court that is located within 50 feet of the reference line for Canobie Lake. Have the plan stamped by a licensed land surveyor, which clearly identifies the reference line, established at elevation 219.91 NGVD, with the primary building setback, (50 feet from the reference line).

The plan needs to show the existing conditions, to include the location and size of the tennis court, the house, pool, garage, normal high water mark (reference line) and property lines. Provide a proposal for removal of all improved areas, i.e. tennis court, and include appropriate erosion and sediment controls and a procedure for stabilizing the area after removal. Have the plan and procedures for restoration submitted to DES for review.

RSA 483-B, the New Hampshire Comprehensive Shoreland Protection Act, was enacted to protect and preserve the shorelands of the State to maintain the integrity and exceptional quality of the State's public waters. RSA 483-B and Env-Ws 1400-1409 establish minimum standards for the future subdivision, use, and development of the shorelands within 250 feet of the state's public waters.

RSA 482-A, the New Hampshire Wetlands law, was enacted to protect and preserve wetlands and surface waters from unregulated despoliation. Prior to dredging, filling, or construction in and adjacent to wetlands or surface waters, an individual is required to obtain a permit. If work is done without a permit, this is considered a violation of RSA 482-A. Failure to respond to this Letter of Deficiency in a timely and complete manner may be construed as noncompliance by the receiving party.

October 18, 2005

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DES personnel will conduct another inspection at a later date to determine whether you have come into and are maintaining full compliance with the applicable statute and rules.

Issuance of this letter shall not preclude further enforcement by DES. Failure to comply with RSA 482-A will result in enforcement by DES, including but not limited to the issuance of fines, administrative orders, or referral to the New Hampshire Office of the Attorney General for prosecution of civil or criminal penalties. If an order is issued to you, it may also be recorded with the Registry of Deeds as an encumbrance against your property.

All documents submitted in response to this Letter of Deficiency should be addressed as follows:

Jeffrey D. Blecharczyk, Shoreland Compliance Coordinator
Wetlands Bureau
Department of Environmental Services
29 Hazen Drive
PO Box 95
Concord, NH 03302-0095

Should you have any questions regarding this letter, or wish to arrange a meeting, please contact Jeffrey D. Blecharczyk at (603) 271-6876.

Sincerely,



Collis G. Adams, CWS
Administrator
Wetlands Bureau

Enclosures

CERTIFIED MAIL 7005 0390 0001 8424 3013

cc: Rene Pelletier, Manager, Land Resources Management Program
Gretchen R. Hamel, Administrator, DES Legal Unit ✓
Windham Conservation Commission
Windham Board of Selectmen
USACOE